



GEORGIA HEIRS PROPERTY

LAW CENTER

ESTATE PLANNING BASICS
WHAT IT INVOLVES AND HOW TO TALK ABOUT IT

www.gaheirsproperty.org
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ROADMAP FOR TODAY

- **What Does the Center Do?**
- **What is Estate Planning?**
 - Advance Directive for Health Care
 - Financial Power of Attorney
 - Guardians and Conservators
 - Trusts
 - Last Will and Testament (Will)
- **What Happens When You Die With a Will?**
- **What Happens When You Die Without a Will?**
- **What is Heirs Property and Why is it a Problem?**
- **How Does Heirs Property Impact Communities, Nonprofits & Cooperative Extension Programs?**
- **Wrap Up**
- **Safeguarding Your Documents**
- **Questions**
- **Appendix: What Decisions Will You Need to Make Before an Attorney Can Prepare Your Estate Plan?**





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GEORGIA HEIRS PROPERTY LAW CENTER

The Georgia Heirs Property Law Center's mission is to build generational wealth, social justice and community stability by securing and preserving property rights.

- 4 attorneys, 1 social worker, 1 paralegal, a network of pro bono volunteers, and grassroots organizational partners.



- State-wide work with geographic focus and outreach in **Atlanta and South Georgia**.

- Offices in **Atlanta, Athens, Fitzgerald and Valdosta**.





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WHAT DOES THE CENTER DO?



Legal support for families, individuals, nonprofits and municipalities through:

- Title audits;
- Title clearing; and
- Remediation of fractured title.



Land loss prevention services to help slow down land loss and secure property assets through:

- Legal and mediation counsel; and
- Development of estate plans and assistance with financial planning.



Asset education through:

- Education of community members and stakeholders about heirs property and potential impact on owners and their communities; and
- Education of landowners about ways to increase the value of their property and generate wealth now and for future generations.



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WHAT IS ESTATE PLANNING?



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WHAT IS ESTATE PLANNING?

- An **estate** is all of the real property and other possessions belonging to a deceased individual.
- **Estate planning** is the process of anticipating and planning what will happen to you and your assets when you die or become incapacitated.
 - How will you hold title to real property while you are alive?
 - Who will inherit your assets after you die?
 - Who will make health care decisions for you if you are unable to make them for yourself?
 - Who will manage your assets if you become incapacitated?





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COMPLETE ESTATE PLAN

- A complete estate plan consists of:
 - **Advance Directive for Health Care**
 - **Financial Power of Attorney**
 - **Last Will and Testament (Will)**
- And may also include:
 - **Nominations for Guardians and Conservators**
 - **Trusts**



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WHO NEEDS AN ESTATE PLAN?

Everyone needs an estate plan,
because it helps preserve the value of
your assets and ensures the right
person is making decisions for you in
case you become incapacitated.





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ADVANCE DIRECTIVE FOR HEALTH CARE



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ADVANCE DIRECTIVE FOR HEALTH CARE

- **Performs 3 major functions:**

1. Allows you to appoint a **health care agent** to make decisions when you are unable to do so;
2. Allow you to **pre-select treatment preferences** in the event you are unable to do so; and
3. Allows you to **appoint a guardian** to watch over you and make decisions about your health and welfare should they be needed.



- **Why should you have an Advance Directive for Health Care?**

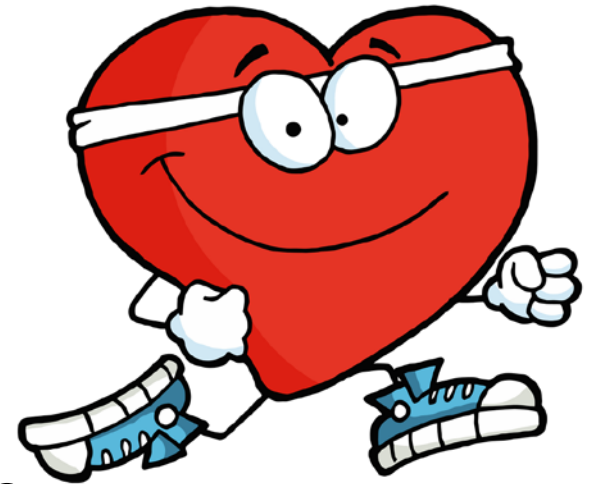
1. **Protection** when you cannot communicate your preferences.
2. **Prevents arguments** between family members during stressful times.
3. Gives you **control** over medical treatments.
4. Can **reduce unwanted medical bills**.



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PART ONE: YOUR HEALTH CARE AGENT

- **Who can be your health care agent?**
 - An adult 18 years or older
 - Who has no conflicts of interest with you, unless a probate court determines such conflicts are insubstantial or the appointment is in your interest.
- **Who cannot be your health care agent?**
 - Any physician or health care provider who is directly involved in your health care.
- Person you select in Advance Directive for Health Care is not required to accept the appointment – before completing, **confirm that your preferred agent is willing to serve** if/when the time comes.





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PART TWO: TREATMENT PREFERENCES

- **Treatment preferences** can be specified in an Advance Directive for Health Care.
- Options:
 1. **Do everything possible to extend my life.**
 2. **Do nothing extraordinary to extend my life but provide pain medication.**
 3. **Do only the following to extend my life:**
 - Provide nutrition by mouth
 - Provide hydration and fluids
 - Use a ventilator
 - Perform CPR
 4. **Customized preferences based on personal instructions**
(always discuss with your attorney)





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PART THREE: YOUR GUARDIAN

- In certain circumstances, you may need a **guardian** with broad powers over your health, safety and well-being.
 - Health care agent can only control your preferences.
 - Option to identify preferred guardian in your Advance Directive for Health Care – can be same person as health care agent.
- Guardian can only be appointed if a court finds:
 - You **lack sufficient capacity** to make or communicate significant responsible decisions concerning your health or safety; and
 - The appointment is in **your best interest**.
- Court will give priority consideration to person identified in your Advance Directive for Health Care as long as he or she will serve your best interests.





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FINANCIAL POWER OF ATTORNEY



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FINANCIAL POWER OF ATTORNEY

- **Financial Power of Attorney** allows you to appoint an agent to conduct your financial affairs for your convenience or if you are physically or mentally unable to do so.
- Agent should be someone **trustworthy** who would handle your finances the same way that you would.
- **General authority** can be given to your **agent** for, among other things:
 - Real property;
 - Personal property;
 - Bank accounts and financial institutions
 - Stocks and bonds;
 - Business operations;
 - Estates, trusts and other interests;
 - Family maintenance;
 - Claims and litigation;
 - Benefits from governmental programs;
 - Retirement plans; and/or
 - Taxes





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TERMINATION OF POWER OF ATTORNEY

- A financial power of attorney typically takes effect immediately, but the agent must have the document in their possession to utilize their power.
- An agent's power ends upon your death, upon a signed revocation, or upon the appointment of a guardian or conservator over your affairs.
- An agent does not have authority to manage a deceased person's estate – only an executor or administrator appointed by the probate court has that authority.



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GUARDIANS AND CONSERVATORS



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GUARDIANSHIPS

- The primary responsibility of a Guardian is to make decisions about the **support, care, education, health, welfare and general well being** of minors or incapacitated adults.
- Types of Guardianships:
 - **Standby Guardianship** – permits a natural guardian to designate someone to be their child's guardian for a limited period of time in the event the natural guardian is still living, but cannot care for their child.
 - **Temporary Guardianship** – temporarily allows for someone else to become the guardian of a child.
 - **Permanent Guardianship** – only permitted when both parents are deceased or the parental rights of any living parent has been terminated by a court.
 - **Testamentary Guardianship** – a guardian nominated through a Will



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CONSERVATORS

- The primary responsibility of a Conservator is to **receive, collect and make decisions about the assets** owned by a minor child or incapacitated adult.
- Can be nominated in a Will, a Financial Power of Attorney or a Nomination of Conservator Petition.



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TRUSTS



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COMMON TYPES OF TRUSTS

- A trust is a entity created by a grantor that holds assets managed by a trustee for the benefit of a beneficiary.
- Trusts can last 360 years in Georgia. It is critical to consult a qualified attorney.
- There are many different kinds of trusts – here are some common types:
 - Testamentary Trust
 - A trust created through a Will to hold assets gifted in the Will to a beneficiary under age 18, until they are a specified age.
 - May also be created for adult wards or irresponsible adults.
 - Revocable Living (AKA Inter Vivos Trust)
 - Revocable – a trust that can be revoked by the grantor any time prior to their death or incapacity.
 - Living (or Inter Vivos) – a trust created during the lifetime of the grantor.
 - Typical purpose of this type of trust is to avoid probate and maintain privacy.
 - May not be necessary in a state like Georgia that has a simple probate court process.
 - You would still need a Will, even if you have a revocable living trust.
 - Special Needs Trust
 - A trust used to preserve and protect the ability of a minor child or adult ward with special needs to collect means-based financial assistance (such as Medicaid, Social Security, etc.)
 - Limited the ways the assets in the trust can be used and the assets are not considered assets of the person with special needs.
 - Can be created through a Will or during the Grantor's lifetime.



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LAST WILL AND TESTAMENT



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WHAT IS A WILL?



A **Will** leaves instructions for what will happen to your assets and who will care for any minor children or incapacitated adults when you pass away.

- **4 major functions of a Will:**

1. Allows you to **give your assets to others** upon your death;
2. Allows you to appoint an **executor** to oversee your estate;
3. Allows you to **establish a testamentary trust** and appoint a trustee to hold and protect assets passing to a minor child or incapacitated adult; and
4. Allows you to **appoint a guardian and conservator** to protect the interests of minor children or incapacitated adults.

Always work with a **licensed attorney** to prepare your Will – online forms cannot account for your personal circumstances and needs.



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WHY DO YOU NEED A WILL?

- Having a Will:
 - Ensures the testator's **wishes are carried out** exactly as he or she wants them **by chosen executor**.
 - Allows the testator the **opportunity** to leave their real property in a way that **does not create heirs property**.
 - Allows the testator to **choose someone trustworthy to care for minor children**.
 - Protects the **financial interests of the testator's family**, especially surviving spouses and minor children.
 - Allows **testator's family to be part of the decision-making process** as the Will is prepared.
 - Gives family members **time to grieve** without having to argue with lawyers and each other over what testator would have wanted or who should become guardian of minor children.



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INDIVIDUALS WHO OWN AN INTEREST IN HEIRS PROPERTY

- Individuals with who own an interest in real property **still benefit** from careful Will drafting.
 - As generations continue to pass away, planning avoids **further compounding the number of heirs** with interests in the real property.
- You **do not need to wait** until heirs property is resolved to begin engaging in estate planning.
 - A Will may be a **stop-gap** measure but it is **not a permanent solution**.
 - Heirs property owners still need to address the larger problem.
 - Wills should be **revisited** as soon as the heir(s) resolves the title problem.





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IMPORTANT TERMS USED IN WILL

- **Decedent**: a person who has died.
- **Estate**: all of the real property and other possessions belonging to a deceased person.
- **Beneficiary**: a person who receives a benefit under a Will.
- **Descendent**: a lineal descendent of a beneficiary.
 - Includes child and grandchild (biological and adopted) but not spouse.
- **Executor**: a person named in Will to handle the estate.
- **Per Stirpes**: distribution of estate when a beneficiary dies before the decedent – the beneficiary's share is distributed among his or her descendants in equal shares.

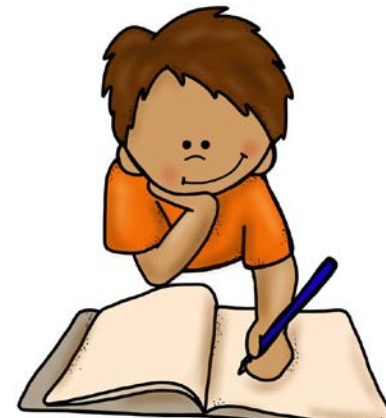




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STANDARD PROVISIONS IN A WILL

- ✓ Identification of **spouse and/or children**;
- ✓ Instructions for disposition of **your body** (burial or cremation);
- ✓ Instructions for dealing with your **debts and expenses**;
- ✓ Instructions for distributing your **home or land**;
- ✓ Instructions for distributing your **personal possessions and vehicle**;
- ✓ Instructions for distributing your **cash, stocks, bonds and other investments**;
- ✓ Instructions for distributing any **other assets**;
- ✓ Identification of **executor** and executor's powers;
- ✓ Creation of **testamentary trust** for minor children or incapacitated adults; and
- ✓ Identification of **guardians and conservators** for minor children.





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ASSETS THAT CAN AND CANNOT BE DISTRIBUTED THROUGH WILL

- You can easily distribute **most of your assets** directly through your Will:
 - Home or other real property if sole owner or tenant in common;
 - Vehicles;
 - Your personal property (jewelry, furniture, keepsakes, etc.); and
 - Money from bank and investment accounts.
- Your Will **cannot distribute**:
 - Home or other real estate owned as joint tenants with rights of survivorship;
 - Life insurance policies;
 - Retirement accounts, pension plans, and 401Ks;
 - Joint bank accounts or payable on death accounts or securities; or
 - Assets held in a living trust.





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EXECUTION REQUIREMENTS FOR A VALID WILL

- Anyone **14 or older** can have a Will.
- **To be valid, a Will must:**
 1. Be a written document;
 2. Be freely and voluntarily signed by testator or a disinterested person in his or her presence and at his or her direction;
 3. Be signed in the presence of 2 disinterested witnesses; and
 4. Transfer assets upon death.
- **No particular form or words** are necessary so long as the document makes the testator's intentions clear.
- Georgia **does not recognize oral or unwitnessed** Wills.
- It is very important that your Will is **properly witnessed and notarized**, or else it may be considered invalid or the probate process will be more complicated.



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WHAT HAPPENS WHEN YOU DIE WITH A WILL?



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WHAT HAPPENS WHEN YOU DIE WITH A WILL

- If someone dies with a valid Will providing instructions for the distribution of assets, he or she has **died testate**.
- When you die testate:
 - **You decide** who inherits from your **estate**.
 - **You decide** who becomes the **executor** of your estate.
 - **You decide** who becomes the **guardian** of your minor children or an incapacitated adult heir.
 - If you leave your real property to more than one person, it becomes **heirs property**.
 - The Will must go through the **Probate Court process** to have effect.



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WHAT HAPPENS WHEN YOU DIE WITHOUT A WILL?



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WHAT HAPPENS WHEN SOMEONE DIES WITHOUT A WILL?

- If someone dies without a valid Will, he or she has **died intestate**.
- When you die intestate:
 - **The Georgia Code decides** who inherits from your **estate**.
 - **A probate judge decides** who becomes the **administrator** of your estate.
 - **A probate judge decides** who becomes the **guardian** of your minor children or an incapacitated adult heir.
 - If you own real property and have more than one heir, it becomes **heirs property**.





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WHY IS DYING INTESSTATE A PROBLEM?

- **Georgia decides** who inherits your assets – and they may not be who you would have chosen.
- Your assets are **divided equally**, without regard for whether an heir wants or needs the assets.
- Intestate succession creates an increased risk of **family discord and disputes**.
- If your real property is inherited by more than one person, it becomes **heirs property**.





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IT'S COMPLICATED: RULES OF INTESTATE SUCCESSION

1. If you **are married with no children**, your entire estate goes to your **spouse**. This is true even if you are separated or have a divorce action that is pending but not yet final.
2. If you are **married and have children**, your estate is shared equally among your **spouse and your children**, with your spouse never receiving less than 1/3 of your estate. If one of your children dies before you, the child's decedents take *per stirpes* the share he or she would have received if alive.
3. If you have **children but are not married**, your estate is shared equally among your **children**. If one of your children dies before you, the child's decedents take *per stirpes* the share he or she would have received if alive.
4. If you are not survived by a spouse, child or other decedents, your estate is shared equally among your **surviving parents**.
5. If you have no surviving parents, then your estate is shared equally by your **siblings**. If one of your siblings dies before you, his or her descendants take *per stirpes* the share he or she would have received if alive.





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IT'S STILL COMPLICATED: RULES OF INTESTATE SUCCESSION

6. If you have no surviving siblings, then your estate is shared equally by your **nieces and nephews**. If one of your nieces or nephews has predeceased you, his or her decedents take *per stirpes* the share he or she would have received if alive.
7. If you have no surviving siblings, nieces, nephews or closer relatives, your estate is shared equally between your **surviving grandparents**.
8. If you have no surviving grandparents or closer relatives, then your estate is shared equally by your **aunts and uncles**. If one of your aunts or uncles dies before you, his or her descendants take *per stirpes* the share he or she would have received if alive.
9. If you have no surviving aunts, uncles or closer relatives, then your estate is shared equally by your **first cousins**. If one of your first cousins dies before you, his or her descendants take *per stirpes* the share he or she would have received if alive.
10. If you have **no surviving relatives**, then your estate becomes the property of the **State of Georgia**.





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WHAT IS HEIRS PROPERTY AND WHY IS IT A PROBLEM?



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WHAT IS HEIRS PROPERTY?

- Home or land that has been passed from **generation to generation** in such a way that multiple people own the same piece of real property.
 - The last known deed for the real property is typically in the name of the deceased relative.
 - This results in **“fractured” or “tangled” title** shared among multiple family members.
- Heirs property is created when:
 - The owner dies **with a Will** leaving real property to **multiple beneficiaries**; or
 - The owner dies **without a Will** so the real property passes to heirs at law via **intestate succession**.





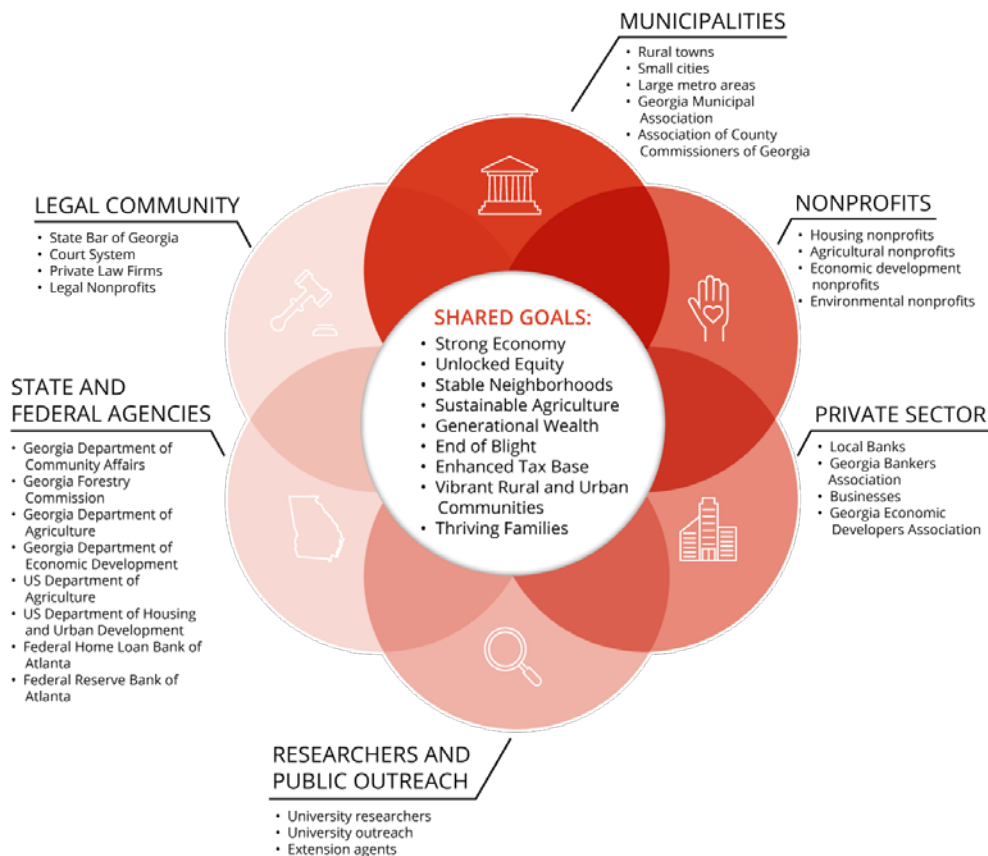
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HOW PREVALENT IS HEIRS PROPERTY IN GEORGIA AND WHO DOES IT IMPACT?

A 2017 USDA and UGA Carl Vinson study determined that 11-25% of parcels in every Georgia county are probable heirs property.

This means the total tax appraised value of probable heirs property in Georgia is more than **\$34 billion**.

Heirs property is created **every day**, as owners die without wills or don't engage in thoughtful estate planning.

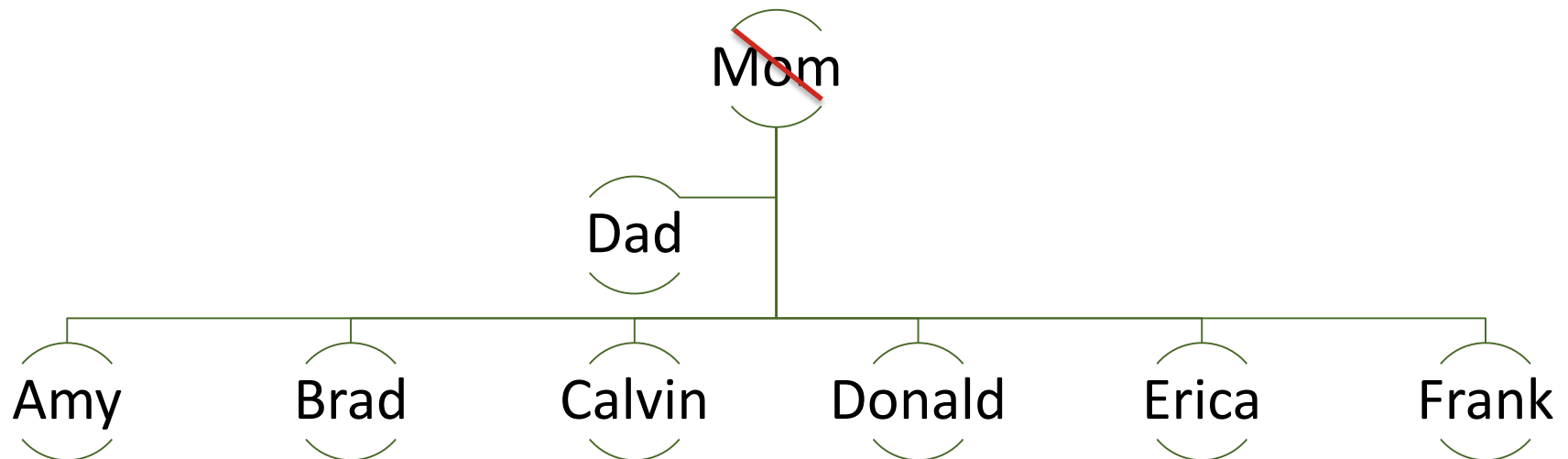




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HEIRS PROPERTY EXAMPLE #1

Mom owns a home and dies without a Will.
She is survived by her husband and 6 children.
The real property is co-owned by the **7 heirs**.



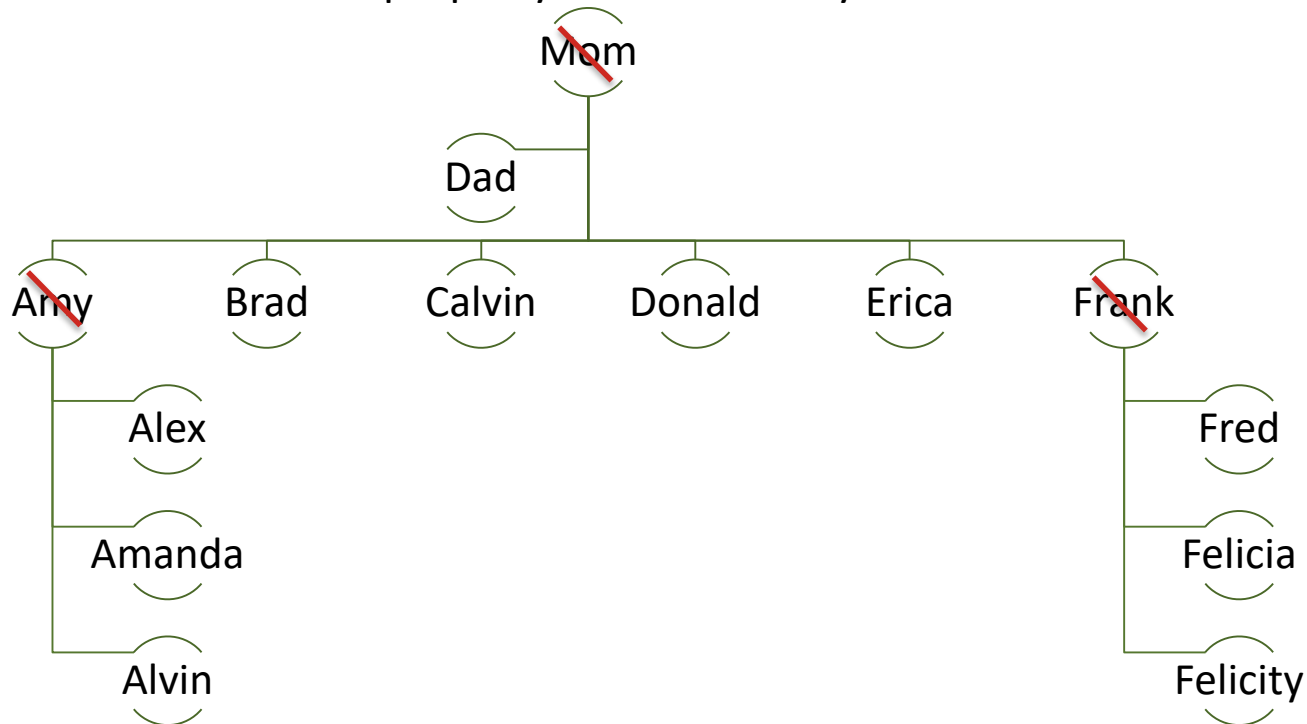


HEIRS PROPERTY EXAMPLE #2

Mom is survived by her husband and 4 of their children.

Two children and their spouses died before Mom and did not have Wills.
But each of Mom's two deceased children were survived by 3 of their own children
(Mom's grandchildren).

The real property is co-owned by **11 heirs**.





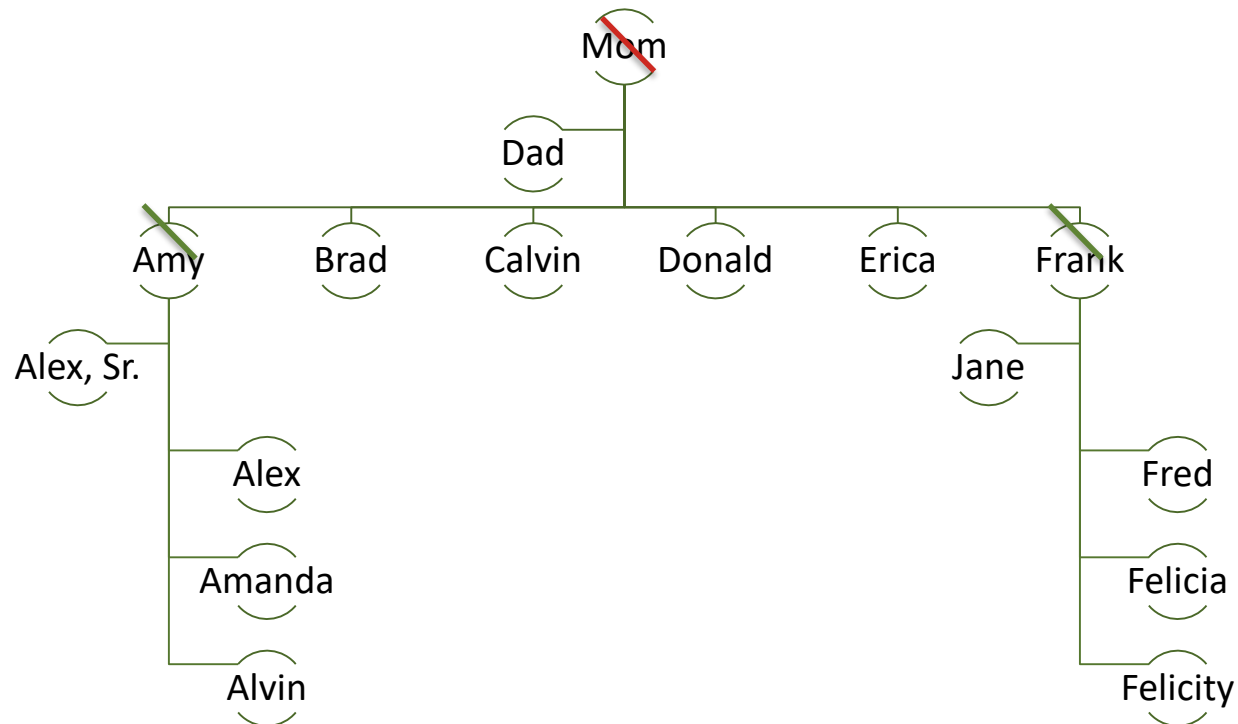
HEIRS PROPERTY EXAMPLE #3

Mom is survived by her husband and their 6 children.

2 children died after Mom and did not have wills.

Each of Mom's two deceased children were survived by 3 of their own children
(Mom's grandchildren) and 1 spouse.

The real property is now co-owned by **13 heirs**.





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HOW IS HEIRS PROPERTY CREATED?

- Heirs property is created when:
 - The owner dies **without a Will** so the real property passes to heirs at law via the **Rules of Inheritance**; or
 - The owner dies **with a Will** leaving real property to two or more beneficiaries
- **NOT ENOUGH** to have a Will. Must have a Will that purposefully prevents heirs property.



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WHAT DOES IT MEAN TO OWN HEIRS PROPERTY?

Owners of heirs property are **tenants in common**:

- Each heir has equal rights to full use and possession of the real property.
- Each heir is legally responsible for taxes and other real property-related expenses.
- Each heir may transfer interest in the real property to another heir or outside.
- Each heir may seek a partition of the real property.
- Each heir must agree to any major decisions about the real property.





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WHY IS HEIRS PROPERTY A PROBLEM?

- Individuals living on heirs property face an increased risk of **forced sale and eviction**.
- Heirs **cannot sell, mortgage or lease** the heirs property without agreement of all heirs.
- Heirs have more **difficulty farming, qualifying for agriculture loans, and selling agriculture products**.
- Heirs cannot qualify for most **rehab programs or secure financing** for needed repairs for their heirs property.
- Heirs may not be able to participate in **government programs** offered by USDA, HUD, FEMA, and other federal and state agencies.
- Heirs cannot qualify for **loan modifications and other loss mitigation programs** when facing foreclosure.
- Heirs may not be able to qualify for **conservation use tax reductions, homestead exemptions or other property tax exemptions**.



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WHY IS HEIRS PROPERTY A PROBLEM?

- Increases the likelihood of **family disputes** and **discord**.
 - Otherwise rational family members **act unreasonably**. Family relationships can be **permanently ruined**.
- Lose a connection to **farming, family history and community**.
- Lose the sense of **independence** associated with ownership.





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HEIRS PROPERTY PREVENTS BUILDING GENERATIONAL WEALTH

When heirs have clear title...

- They can open **a line of credit** or a **mortgage**.
- They can use the real property as **collateral for a loan** to start a business, farm or send their kids to college.
- They can generate income by **leasing the home to renters or the real property for farming or hunting**.
- They can generate income through **farming or selling natural resources** on the real property.
- They can **sell** the real property.
- They can pass the real property on to their **family**.





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HOW CAN ESTATE PLANNING PREVENT HEIRS PROPERTY ?

- Own real property as **joint tenants with rights of survivorship**.
- Prepare a **Will** directing how property should be distributed upon your death.
 - Leave real property to **single** beneficiary.
 - Instruct executor to **sell real property** and divide proceeds between beneficiaries.
 - Give family members **option to purchase** real property.
 - Instruct executor to **divide real property** among beneficiaries.
- Place real property into **limited liability company** or **trust**.





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HOW DOES HEIRS PROPERTY IMPACT COMMUNITIES, NONPROFITS & COOPERATIVE EXTENSION PROGRAMS?



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HOW DOES HEIRS PROPERTY IMPACT COMMUNITIES?

- Many **blighted properties (old homesteads)** are abandoned heirs property.
- Status makes it difficult for cities to identify owners, **enforce code ordinances and collect property taxes.**
- Heirs property is a contributing factor to the **decrease in owner-occupied homes and family owned farms.**
- Heirs property hinders efforts to increase **affordable housing** and family stability.
- Communities can **lose funding for revitalization efforts** if heirs property is pervasive.





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HOW DOES HEIRS PROPERTY IMPACT NONPROFITS?

Estate planning is critical for nonprofits to:

- **Preserve subsidies** nonprofits invest in homes and community revitalization;
- **Preserve affordable housing stock;**
- **Prevent blight** while increasing generational wealth;
- Provide safe housing for **minor children** and **incapacitated adults**.



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HOW DOES HEIRS PROPERTY IMPACT EXTENSION AND LANDOWNERS?

Heirs Property is a **disqualification** for many assistance programs and affects many agencies simultaneously. Ultimately, Heirs Property affects Landowners ability to participate in programs and affects Cooperative Extension Agents ability to assist landowners.

Therefore, Estate planning is **critical** for cooperative extension programs to:

- Deliver **Financial Literacy Programs**;
- Provide critical services to **manage and build assets** of homes and farms
- **Prevent loss** of homes and farms;
- Enable **Best Management Practices** of Conservation and Forestry Plans;
- **Manage timber** through planting, controlled burns, harvesting and selling.



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WRAP UP

- Having a Will **does not mean** you will not create heirs property upon your death.
- **BUT having a Will** that does not leave real property to more than one person is the **best way to prevent heirs property**.
- Who needs to consider heirs property when drafting their Will?
 - **EVERYONE** —
 - Especially if you own real property;
 - But even if you don't currently own real property or know that you own real property;
 - And even if you own just a fractional interest in real property.



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SAFEGUARDING YOUR DOCUMENTS

- Original documents should be stored in a **safe and accessible place**.
 - Documents **should not be stored in testator's safety deposit boxes** because they are not easily accessible.
- Executor should **know where to find the Will** upon testator's death.
- **DO NOT** write on your Will, cross out any sections or words, or make any changes in writing on the original document. Doing so may invalidate the entire document.



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QUESTIONS?

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www.gaheirsproperty.org

These slides and the appendix we did not cover during this webinar are available as a pdf on our website at: www.gaheirsproperty.org/publications.



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APPENDIX

**WHAT DECISIONS WILL YOU NEED TO
MAKE BEFORE AN ATTORNEY CAN
PREPARE YOUR ESTATE PLAN?**



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PREPARING TO MEET WITH AN ESTATE PLANNING ATTORNEY

- While language and method of distribution of estate assets may differ from Will to Will, most **Wills contain standard information.**
- It is **recommended** that you utilize the Statutory Advance Directive for Health Care and the Statutory Financial Power of Attorney.
- To save time when meeting with an attorney, there are **several decisions** you can be considering beforehand.



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STANDARD PROVISIONS OF A WILL

- ✓ Identification of **spouse and/or children**;
- ✓ Instructions for disposition of **your body** (burial or cremation);
- ✓ Instructions for dealing with your **debts and expenses**;
- ✓ Instructions for distributing your **home or land**;
- ✓ Instructions for distributing your **personal possessions and vehicle**;
- ✓ Instructions for distributing your **cash, stocks, bonds and other investments**;
- ✓ Instructions for distributing any **other assets**;
- ✓ Identification of **executor** and executor's powers;
- ✓ Creation of **testamentary trust** for minor children or incapacitated adults; and
- ✓ Identification of **guardians and conservators** for minor children.





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ESTATE PLANNING DECISION #1: **YOUR REMAINS**

- You can state in your Will whether you desire **burial or cremation**.
- You can also state **where** you want to be buried or **what** you want done with your ashes.
- Your Will might not be read until after your funeral, so **make sure your loved ones know** your desires while you are still living.



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ESTATE PLANNING DECISION #2: **YOUR EXECUTOR**

- An **executor** is a person who will carry out the instructions in your Will, present the Will for probate, and administer your estate.
 - Your executor should be **honest, trustworthy, responsible**, be willing to see the administration through to completion, and be willing to ask professionals for help if needed.
 - Your executor can be a **spouse, family member, friend, lawyer or financial institution** (usually for a fee).
 - Your executor does not have to live in Georgia.
- Co-executors are not recommended as they can slow down the distribution of the estate.
- Before selecting your executor(s), talk to your choices to **make sure they are willing** to serve.
- Plan to have **1 or 2 backup executors** in case your original choice is unable or unwilling to serve.



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ESTATE PLANNING DECISION #3: **WHO WILL RECEIVE YOUR ASSETS**

- **Types of assets** you can distribute through your Will:
 - Home or land;
 - Personal property – personal effects, furniture, clothes, cars, collections, jewelry, electronics, etc.; and
 - Bank accounts, bonds, CDs, money market funds, and investments.
- For your home or land, be sure to select an **option that prevents heirs property!**
- Rather than listing out all of your personal property in your Will, consider clipping a **tangible personal property list** to your Will – you can change it over time without having to change your Will.



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ESTATE PLANNING DECISION #4: **WHETHER YOU NEED A TRUST**

- You can establish a **testamentary trust for children, grandchildren, or other family members** under 18 years old or adults who are unable to manage their own affairs who might receive money or real estate through your Will.
 - The trust allows an adult **trustee** to hold the assets until the beneficiary reaches a certain age.
 - If any minors or adult beneficiaries suffer from any medical decision for which they are receiving government benefits, it may be necessary to create a **special needs trust**.
 - Special needs trusts can help ensure these individuals are not disqualified from government programs.
 - Special needs trusts are complicated and beyond the scope of the clinic.
- You can also establish a **family trust** through your Will.
 - Instruct your executor to create a family trust after your passing.
 - You can provide general directions for the trust, but the trustee will be responsible for formulating the trust agreement and conveying the assets to be held in trust.



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ESTATE PLANNING DECISION #5

YOUR TRUSTEE (IF YOU NEED A TRUST)

- An **trustee** is a person who will be responsible for the assets held by the trust until it is distributed.
 - The trustee can be a **spouse, family member, friend, lawyer or financial institution** (usually for a fee).
 - The trustee can be the same person as your executor.
 - The trustee should also be **honest, trustworthy, and responsible**.
- The trustee is responsible for decisions about **when and in what amount the assets and income from the trust can be distributed** to the beneficiaries.
- Before selecting your trustees(s), talk to your choices to **make sure they are willing** to serve.
- Plan to have **1 or 2 backup trustees** in case your original choice is unable or unwilling to serve.



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ESTATE PLANNING DECISION #6: **REPORTS AND BONDS**

- Georgia law requires your executor to file **reports and inventories** with the probate court unless you state in your Will that reports are not necessary.
- Georgia also requires the executor to **post a bond** (type of insurance) to protect the estate from theft or mismanagement unless you state in your Will that a bond is not necessary.
- Reports and bonds provide **extra protection** against a dishonest executor but also increase the executor's workload.
 - If you trust your executor, **waiving reports and bonds** will save the executor time and expenses.



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ESTATE PLANNING DECISION #7: **YOUR HEALTH CARE AGENT & GUARDIAN NOMINATION**

- Your **health care agent** will make all health care decisions for you when you cannot or do not want to make them yourself. Your agent has access to your medical records and can disclose that information to others.
 - Your health care agent should be **trustworthy and likely to respect your wishes**.
- Before selecting your agent, talk to your choices to **make sure they are willing** to serve.
- Plan to have **1 or 2 backup agents** in case your original choice is unable or unwilling to serve.
- You can also **nominate a guardian** for yourself in the case that a court determines you need a guardian appointed.
- Court will give priority consideration to person identified in your Advance Directive for Health Care as long as he or she will serve your best interests.



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ESTATE PLANNING DECISION #8: **YOUR TREATMENT PREFERENCES**

- You have the option to select treatment preferences in your Advance Directive for Health Care.
- In the case that two doctors have determined in writing that you have a terminal condition or are in a state of permanent unconsciousness and they can keep you alive, but are unable to cure you, and you are unable to communicate your own wishes after reasonable and appropriate efforts have been made to communicate with, what are your treatment preferences:
 1. **Do everything possible to extend my life.**
 2. **Do nothing extraordinary to extend my life but provide pain medication.**
 3. **Do only the following to extend my life:**
 - Provide nutrition by mouth
 - Provide hydration and fluids
 - Use a ventilator
 - Perform CPR
 4. **Customized preferences based on personal instructions** (always discuss with your attorney)



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ESTATE PLANNING DECISION #9: **YOUR FINANCIAL AGENT**

- Your agent **conducts your financial affairs** for your convenience or if you are physically or mentally unable to do so.
- Agent should be someone **extremely trustworthy.**



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GETTING STARTED: TALK TO YOUR FAMILY

- As you are making your decisions, be sure to **talk to your family!**
- Inform them of **your wishes.**
- Gauge whether they are on board with the **legacy** you want to leave them.
- Get their feedback, but **make the decision that is right for you.**